



DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-583-853

Certain Crystalline Silicon Photovoltaic Products from Taiwan: Notice of Court Decision Not in Harmony with the Final Results in the Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On March 10, 2023, the U.S. Court of International Trade (CIT) issued its final judgment in *JA Solar International Limited and JA Solar USA Inc. v. United States*, Court No. 21-00514, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the fifth administrative review of the antidumping duty order on crystalline silicon photovoltaic products (solar products) from Taiwan covering the period of review (POR), February 1, 2019, through January 31, 2020. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results in the administrative review and that Commerce is amending the final results. with respect to dumping margins assigned to Inventec Solar Energy Corporation (ISEC) and E-TON Solar Tech Co., Ltd. (E-TON).

DATES: Applicable March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-3936.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2021, Commerce published the final results of the antidumping administrative review on solar products from Taiwan, covering the period February 1, 2019,

through January 31, 2020.¹

JA Solar International Limited and JA Solar USA Inc., (together, JA Solar) appealed Commerce's *Final Results* to the CIT. On December 19, 2022, the CIT remanded the *Final Results* to Commerce to reconsider: (1) its determination that ISEC lacked actual knowledge of the U.S. destination of certain sales, based on the parties' change to the final contract language in light of record evidence suggesting that before the adoption of the final contract, sales were made with an express understanding that the final destination was the United States; (2) the reasonableness of its inference that ISEC lacked actual knowledge of the U.S. destination at the adoption of the final contract because the contract price did not change; and (3) whether ISEC had reason to know of the U.S. destination (*i.e.*, "constructive knowledge") should Commerce continue to find lack of actual knowledge for any of the sales at issue.

In its final remand redetermination, issued on March 2, 2023, Commerce determined: (1) to include ISEC's sales to JA Solar in our analysis of ISEC's U.S. sales; (2) to recalculate ISEC's weighted-average dumping margin for the 2019-2020 review period; and (3) to calculate an assessment rate applicable to solar products imports by JA Solar into the United States produced by ISEC.² As a result, Commerce calculated a revised weighted-average dumping margin for ISEC and E-TON of 7.42 percent and assigned an importer-specific assessment rate to JA Solar. On March 10, 2023, the CIT sustained Commerce's remand redetermination.³

Timken Notice

In its decision in *Timken*,⁴ as clarified by *Diamond Sawblades*,⁵ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of

¹ See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; Partial Rescission of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2019-2020*, 86 FR 49509 (September 3, 2021) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See *Final Results of Redetermination Pursuant to Court Remand, JA Solar International Limited and JA Solar USA Inc. v. United States*, Court No. 21-00514 (CIT 2022), dated March 2, 2023

³ See *JA Solar International Limited and JA Solar USA Inc. v. United States*, Slip Op. 23-30, Court No. 21-00514 (CIT 2023).

⁴ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

⁵ See *Diamond Sawblades Mfrs. Coal. v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s March 10, 2023, judgment in this case constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to ISEC and E-TON as follows:

Exporter/Producer	Weighted-Average Dumping Margin (percent)
Inventec Solar Energy Corporation and E-TON Solar Tech Co., Ltd	7.42

Cash Deposit Requirements

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP) for ISEC. In the *Final Results*, Commerce determined to treat ISEC and E-TON as a single entity for the purposes of this administrative review, in accordance with 19 CFR 351.401(f).⁶ However, the cash deposit will remain specific to ISEC, given the fact that E-TON ceased to exist during the POR.⁷

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT order from liquidating entries that were produced and/or exported by ISEC and E-TON, and imported by JA Solar, that were entered, or withdrawn from warehouse, for consumption during the period February 1, 2019, through January 31, 2020. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event that the CIT’s ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on

⁶ See *Final Results* IDM at Comment 3.

⁷ *Id.*

unliquidated entries of subject merchandise produced and/or exported by ISEC and E-TON, and imported by JA Solar, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*,⁸ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: March 17, 2023.

Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

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⁸ See 19 CFR 351.106(c)(2).